the defendant's department store, in violation of a statute which made it a misdemeanor to employ or allow persons under eighteen to operate elevators. While so engaged, he was crushed to death. *Held*, that the plaintiff can recover. *Beaver* v. *Mason, Ehrman & Co.*, 143 Pac. 1000 (Ore.).

The decision takes the ground that the violation of the statute by the defendant was the equivalent of negligence, and is undoubtedly sound. The statute was designed to prevent just such accidents as the one that occurred. Though the point is not discussed, the case also involves a decision that the boy's part in the violation of the statute does not bar the recovery, for the statute was designed to protect persons in his position, not to punish them, and its policy is such that any assumption of risk by the persons within its purview is forbidden. This follows the accepted view. *Berdos* v. *Tremont & Suffolk Mills*, 209 Mass. 489, 95 N. E. 876. For an extensive discussion of the principles involved in the case, see Dean Thayer's article on Public Wrong and Private Action, 27 HARV. L. REV. 317; see also 26 HARV. L. REV. 262.

NEW TRIAL — TIME WITHIN WHICH MOTION MUST BE MADE — EFFECT OF EXPIRATION OF TERM. — In a criminal proceeding, the defendant was convicted, and judgment entered. After the expiration of the term, it was discovered that one of the jurymen who served at the trial had been prejudiced against the defendant. This discovery could not have been previously made by the exercise of reasonable diligence. *Held*, that a new trial cannot be granted. *United States* v. *Mayer*, 235 U. S. 55.

For a discussion of the effect of the expiration of the term on a party's right to a new trial, see p. 412 of this issue of the REVIEW.

POWERS — NON-EXCLUSIVE POWERS — DOCTRINE OF ILLUSORY APPOINTMENTS IN UNITED STATES. — The testator devised land in trust for his son for life, with power to convey to his children "in such shares and proportions among them as he by his last will" should appoint, and in default of appointment to the children in equal shares. The donee of the power by his will gave ten dollars apiece to five of his seven children and the remainder of the proceeds of his real estate to the other two. He possessed no other real estate than that subject to the power. *Held*, that the will was a valid exercise of the power. *Crawford's Estate*, 62 Pitts. L. J. 536 (Orphan's Ct., Alleghany Co., Pa.).

Ever since the adoption of the modern rule allowing after-acquired realty to pass by will, general words of devise have been insufficient to exercise a special power of appointment, even though at the date of the will the testator had no other property than that subject to the power. *In re Mills*, 34 Ch. D. 186. A Pennsylvania statute, however, has established the contrary rule. See *Aubert's Appeal*, 109 Pa. St. 447. Even under this statute the court would have been forced to hold the appointment invalid if it had applied the doctrine of illusory appointments introduced by the English equity court, which required the donee of a non-exclusive power to appoint to each of the class a substantial portion of the property. *Kemp* v. *Kemp*, 5 Ves. 849. England, however, repudiated this doctrine by a statute which provided that a non-exclusive power was validly exercised as long as each member of the class received some of the property, no matter how small a share. 11 GEO. IV. & 1 WM. IV., c. 46. A later statute removed this formal requirement and made non-exclusive powers equivalent to exclusive powers. 37 & 38 VICT., c. 37. In America, a few jurisdictions have recognized the doctrine of illusory appointments. *Thrasher* v. *Ballard*, 35 W. Va. 524. See 1 TIFFANY, REAL PROPERTY, § 288. But several other states in which the question has arisen, among them Pennsylvania, have wisely refused to adopt as a part of the common law a rule which proved so inadvisable in practice that it was long ago discarded by its creators. See *Graeff* v. *De Turk*, 44 Pa. St. 527; *Lines* v.

Darden, 5 Fla. 51, 81; *Hawthorn* v. *Ulrich*, 207 Ill. 430, 69 N. E. 885. The next step in the evolution of the subject in this country should be in line with the second English statute, for the doctrine of non-exclusive appointments introduces a mere technicality so long as it can be evaded by trivial gifts to the rest of the class. See 25 HARV. L. REV. 26.

PROXIMATE CAUSE — INTERVENING CAUSES — FORESEEABILITY: EFFECT OF VIOLATION OF STATUTE. — In an action for damages for negligent injuries, the plaintiff offered to prove that the defendant, in violation of a city ordinance prohibiting the sale of firearms to minors, sold a rifle and cartridges to a boy of fifteen, and that the boy accidentally shot the plaintiff with the rifle. *Held*, that a verdict was rightly directed for the defendant. *Hartnett* v. *Boston Store of Chicago*, 106 N. E. 837 (Ill.).

Upon common-law principles, the independent intervening act of a third person will not make a preceding cause remote if such act was foreseeable. *Lane* v. *Atlantic Works*, 111 Mass. 136; *Jennings* v. *Davis*, 187 Fed. 703, 711. This rule has been applied both to cases under statutes and, in their absence, to cases where foreseeable injury has resulted from firearms or explosives placed in the hands of third parties. *Dixon* v. *Bell*, 5 M. & S. 198; *Sullivan* v. *Creed*, [1904] 2 I. R. 317; *Carter* v. *Towne*, 98 Mass. 567; *Anderson* v. *Settergren*, 100 Minn. 294, 111 N. W. 279; *Binford* v. *Johnston*, 82 Ind. 426. The principal case reasoned that since no proof of the foreseeability of the boy's act was offered, the defendant was not the proximate cause of the injury. It is submitted that the correctness of the decision depends upon the construction of the ordinance involved. If the ordinance was passed to avert danger to other people from firearms in the hands of minors, then, the harm having resulted by the very means through which the legislative body apprehended it, the defendant should not be permitted to negative causation on the ground that harm through this means was not foreseeable in the particular case. See *Pizzo* v. *Wicman*, 149 Wis. 235, 134 N. W. 899; see 27 HARV. L. REV. 319 *et seq.* Under this view the plaintiff would be entitled to a verdict on the facts offered. If, however, the ordinance is, as it would in fact appear to be, solely for the purpose of preventing injury to minors from firearms in their own hands, then the result of the principal case is justifiable. Under a similar statute another jurisdiction has reached the same result as the principal case. *Poland* v. *Earhart*, 70 Ia. 285, 30 N. W. 637.

RESTRICTIONS AND RESTRICTIVE AGREEMENTS AS TO USE OF PROPERTY — AGREEMENT IN CONTRACT OF SALE TO ENTER INTO RESTRICTIVE COVENANT — ENFORCEMENT OF SUCH AN AGREEMENT AS AN EQUITABLE SERVITUDE. — The owner of adjoining tracts of land contracted to sell one to the plaintiff, who agreed to covenant in the conveyance not to make any use of the premises offensive to the vendor, his heirs and assigns, which would lessen the value of the adjoining land as residential property. The vendor then conveyed the adjoining land to a third party, and later completed the conveyance to the plaintiff, who convenanted as agreed. The plaintiff contracted to sell to the defendant, who refused to perform on learning of the restrictive covenant. *Held*, that the plaintiff is entitled to specific performance, since the restrictive covenant is not enforceable. *Millbourn* v. *Lyons*, [1914] 2 Ch. 231 (C. A.).

Equity will enforce a restrictive covenant, irrespective of whether or not it runs with the land at law, against assignees with notice who are not parties to the covenant, if there is a clear intention to bind the land, and not merely the parties to the covenant. *Tulk* v. *Moxhay*, 2 Phil. 774; *Whitney* v. *Union Ry. Co.*, 11 Gray (Mass.) 359. The agreement need not be in the form of a covenant — a mere oral agreement is enough. *Parker* v. *Nightingale*, 6 Allen